

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re application of:  
Gary K. Michelson  
Serial No: (Cont. of 09/626,636)  
Filed: September 18, 2003  
For: OSTEOGENIC PACKING DEVICE AND  
METHOD

Prior Application Information:

Group Art Unit: 3731

Examiner: U. Ho

MS PATENT APPLICATION  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**CONTINUING APPLICATION TRANSMITTAL**

Transmitted herewith for filing is a ☒ Continuation ☐ Divisional ☐ Continuation-In-Part application under 37 C.F.R. § 1.53(b) of prior patent application No. 09/626,636, filed July 27, 2000.

- ☐ Applicant claims small entity status under 37 C.F.R. §§ 1.9 and 1.27.
- ☒ 49 total application pages including specification, claims (20 total and 2 independent), and abstract are enclosed.
- ☐ A newly executed Declaration and Power of Attorney ☐ is enclosed ☐ will follow.
- ☒ A copy of the Declaration and Power of Attorney from the prior application is enclosed.  
The entire disclosure of the prior application, from which an oath or declaration is supplied, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.
- ☒ 24 sheets of formal drawings (A4 paper; Figs. 1-18) are enclosed.
- ☒ The prior application is assigned of record to: Karlin Technology, Inc. on June 10, 1993 at Reel 6600, Frame 322.
- ☒ The power of attorney in the prior application is to at least one of the following: MARTIN & FERRARO, LLP; Thomas H. Martin, Reg. No. 34,383; Amedeo F. Ferraro, Reg. No. 37,129; and Todd M. Martin, Reg. No. 42,844.
  - ☐ The power appears in the original Declaration of the prior application.
  - ☒ Since the power does not appear in the original Declaration, a copy of the Revocation of Original Power of Attorney and Grant of New Power of Attorney in the prior application is enclosed.
- ☐ A certified copy of \_\_\_\_ Patent Application No. \_\_\_\_ filed \_\_\_\_ from which priority is claimed under 35 U.S.C. § 119 is enclosed.
- ☒ Information Disclosure Statement (IDS) and Form PTO-1449 are enclosed.
- ☒ Request for Interference Under 37 C.F.R. § 1.604 is enclosed.



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P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**CERTIFICATE OF MAILING VIA U.S. EXPRESS MAIL**

Express Mail Mailing Label No. EU551690008US

Date of Deposit: September 18, 2003

I hereby certify that:

1. Continuing Application Transmittal Form (in duplicate; \$750 filing fee charged to Deposit Account No. 50-1068)
2. 49 total application pages including specification, claims (20 total and 2 independent), and abstract
3. Copy of Declaration and Power of Attorney from prior application
4. 24 sheets of formal drawings (A4 paper; Figs. 1-18)
5. Copy of Revocation of Original Power of Attorney and Grant of New Power of Attorney from prior application
6. Information Disclosure Statement Under 37 C.F.R. § 1.97(b) with Form PTO-1449
7. Self-addressed return postcard receipt
8. Request for Interference Under 37 C.F.R. § 1.604

are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service with sufficient postage under 37 C.F.R. § 1.10 on the date indicated above and are addressed to:

MS PATENT APPLICATION  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Date: September 18, 2003

  
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Gary K. Michelson, M.D.	)	
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Serial No.: (Con. of 09/626,636)	)	Group Art Unit: (3731)
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Filed: September 18, 2003	)	Examiner: (U. Ho)
	)	
For: OSTEOGENIC PACKING DEVICE	)	
AND METHOD	)	

Mail Stop PATENT APPLICATION  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**REQUEST FOR INTERFERENCE UNDER 37 C.F.R. § 1.604**

Applicant hereby requests an interference with U.S. Application No. 10/040,154 (U.S. Publication No. 2002/0133166) to McKay et al. (hereinafter, "McKay '154") pursuant to 37 C.F.R. § 1.604(a). A proposed count is attached hereto.

Claims 1, 2, 9, 15, 17, 21-23, 26-29, 32, 33, 42, 43, and 47-50 of McKay '154 correspond to claims 1-20, respectively, of the proposed count. Claims 1-20 of the present application also correspond to claims 1-20, respectively, of the proposed count.

Applicant requests an interference with McKay '154 because the aforementioned claims of McKay '154 cover subject matter which was invented by Applicant prior to the earliest priority date of McKay '154.

Applicant submits that the subject matter of claims 1-20 of the proposed count is fully supported by Applicant's original disclosure, for example, on page 8, lines 3-6 and page 38, line 5 to page 39, line 6 of the specification and Figs. 14B and 15. The Examiner is requested to declare an interference between the present application and U.S. Application No. 10/040,154.

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 50-1068.

Respectfully submitted,

MARTIN & FERRARO, LLP

Date: September 18, 2003

By:



Thomas H. Martin

Registration No. 34,383

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**PROPOSED COUNT UNDER 37 C.F.R. § 1.607(a)(2)**

1. An apparatus, comprising: an osteogenic material packing device for packing osteogenic material onto a fusion device, said packing device having a cavity defined therein adapted to receive said fusion device, and an access port intersecting said cavity to receive said osteogenic material.
2. The apparatus of claim 1, wherein said packing device includes a coupling portion to couple said packing device to another device.
3. The apparatus of claim 1, wherein said packing device includes a first section, a second section separate from said first section, said first and second sections cooperable to define said cavity.
4. The apparatus of claim 3, wherein said access port is defined in only one of said sections.
5. The apparatus of claim 1, wherein said cavity includes a first opening at one end of said packing device and a second opening at the other end of said packing device.
6. The apparatus of claim 1, further comprising a compactor adapted to pack osteogenic material into said access port.
7. The apparatus of claim 6, wherein said compactor includes: a handle; a shaft coupled to said handle; and a plunger coupled to said shaft for compacting osteogenic material through said access port, said plunger having a curved contacting surface and being adapted to fit through said access port.
8. The apparatus of claim 1, wherein said cavity has a cylindrical shape.

9. The apparatus of claim 1, further comprising an inserter to insert said fusion device into said packing device.
10. The apparatus of claim 9, wherein said inserter has a cylindrical shaft with a coupling end at which said fusion device is coupled and a handle provided on the other end of said shaft.
11. The apparatus of claim 9, wherein said coupling end includes a ridge for engaging a groove in said fusion device.
12. The apparatus of claim 9, wherein said inserter includes a coupling mechanism to couple said fusion device to said coupling end, said shaft having a passageway defined therein with an opening at said coupling end, said coupling mechanism having a shaft extending through said passageway with at least a portion of said shaft being threaded at said coupling end and a knob coupled to said shaft.
13. A method of loading osteogenic material onto a fusion device, comprising:  
inserting the fusion device into a cavity of a packing device that includes an access port; and providing the osteogenic material through the access port and onto the fusion device.
14. The method of claim 13, wherein said providing includes packing the osteogenic material onto the fusion device with a compactor.
15. The method of claim 13, further comprising coupling the fusion device to an inserter.
16. The method of claim 13, further comprising closing the packing device around the fusion device before said providing step.

17. The method of claim 13, further comprising inserting the fusion device between adjacent vertebrae after said providing step.
18. The method of claim 13, further comprising: removing the fusion device from the packing device after said providing; and inserting the fusion device into a cannula.
19. The method of claim 18, wherein said inserting the fusion device into the cavity of the packing device and said removing the fusion device occur through a single opening of the cavity.
20. The method of claim 18, further comprising inserting the cannula at an intervertebral space between adjacent vertebrae.